



GOVERNMENT OF INDIA

Chandigarh Administration Gazette

Published by Authority

NO. 116] CHANDIGARH, MONDAY, SEPTEMBER 25, 2023 (ASVINA 03, 1945 SAKA)

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 11th September, 2023

No. 13/20-HII(2)-2023/13232.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 52/2020 dated 03.07.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

BIKRAM SINGH S/O SH. SURAJAN SINGH R/O HOUSE NO.9, POST OFFICE SINGPURA, TEHSIL KARALI, DISTRICT MOHALI, PUNJAB, SAS NAGAR PUNJAB. (Workman)

AND

1. THE DIRECTOR / PRINCIPAL, GOVT. MEDICAL COLLEGE AND HOSPITAL EDUCATION & RESEARCH, CHANDIGARH ADMINISTRATION, SECTOR 32 UT CHANDIGARH.
2. GOVERNMENT OF INDIA MINISTRY OF FAMILY AND HEALTH WELFARE, SECTION 2 THROUGH ITS SECRETARY, NEW DELHI. (Management)

AWARD

1. Bikram Singh, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that earlier workman filed petition under Section 2-A of the ID Act, reference was sent to the Chandigarh Administration, who further sent referred for adjudication to the Labour Court, U.T. Chandigarh and the same was declined by the then Presiding Officer of the Labour Court, and contractual employee was held not to be employee of Government Medical College & Hospital (GMCH). The present case is filed on the basis of fresh cause of action and on different footings as below :—

- A. The workman was appointed through the contractor against the post of OPD Attendant. Later on the contractor left. The workman continues to serve more than 240 days continuously without any break. The workman was paid salary by the Director of the GMCH. Thereafter, the workman started claiming regularisation of his services but his services were orally terminated without any show cause notice, charge sheet or without following mandatory provisions of the ID Act.

Signature Not Verified
Digitally signed by
Jalinder Kumar
Date: 2023.09.25
16:15:09 IST
Reason: Published
Location:

(1727)

This is Digitally Signed Gazette. To verify, visit :
<https://egazette.chd.gov.in>

- B. The workman filed case before the Assistant Labour Commissioner (ALC) under the Minimum Wages Act, including other aggrieved workers. The claim was allowed. The Award was passed by Sh. Hoshiar Singh, the then ALC. The management challenged the Award of ALC and filed CWP No.8472 of 2002 before the Hon'ble High Court of Punjab & Haryana. The writ petition was dismissed. The management / GMCH filed LPA No.426 of 2015, vide which the Hon'ble High Court directed the management / GMCH to pay an amount of ₹17,982/-. The said amount was paid through the Court of Chief Judicial Magistrate, Chandigarh, which the workman received from the Court in view of the Award passed by ALC. In this way workman became the employee of GMCH i.e. management No.1 & 2. The Award passed by the then Labour Court, U.T. Chandigarh became redundant. The SLP is still pending for adjudication before the Hon'ble High Court.
- C. The workman along with others workmen moved various representations to the management No.1 & 2 for regularisation of their services, but nothing was done by the management.
- D. The junior workmen to the workman were retained by the management and they are still retained by the management and they are still continuing. Even thereafter, many posts were filled by the management without considering the case of the workman. There are many hospitals under the jurisdiction of Chandigarh Administration, particularly in Sector 48 and many vacancies and many posts of Lt. Attendant are still lying vacant. The management No.1 & 2 are likely to start recruitment. The workman deserves to be appointed against the post.
- E. Finding no other alternative, workman sent registered legal notice to the management and Union of India. The Union of India vide its letter dated 21.08.2019 replied the legal notice.
- F. The whole action on the part of the management in termination, the services of the workman is illegal, unlawful, unconstitutional and contrary to the mandatory provisions of the ID Act. Said illegal termination deserves to be set aside and the workman deserves to be reinstated with continuity of service, full back wages and consequential benefits.
- G. The workman is not gainfully employed anywhere in India with Government or semi-Government or private organisation.
- H. The cause of action arose in the year 1996, when the workman was employed OPD Attendant. It further arose when services of the workman terminated illegally without following the mandatory provisions of law. Further cause of action arose when ALC passed the Award in favour of the workman including other workmen and it again arose when department filed CWP, which was dismissed and the department filed LPA and in LPA Hon'ble High Court directed the department to pay ₹17,982/- which was paid through cheque by the management. It further arose when ALC directed the workman to approach the Labour Court. The cause of action is recurring.

The claim statement is well within territorial jurisdiction of the present Court. Prayer is made that termination order may be set aside being unlawful, unconstitutional, illegal, null, void and void *ab-initio*. The workman may be reinstated against the same post with continuity of services, full back wages with continuity of service, seniority and all other consequential benefits.

3. On notice management No.1 & 2 contested the claim statement by filing joint written reply wherein preliminary objections are raised on the ground that the claim statement in fact is a second reference for the same cause of action, praying for setting aside termination of the workman by contractor M/s Enterclimex Security Pvt. Ltd. vide letter dated 31.12.1997 and claiming reinstatement is not legally maintainable being barred by '*res-judicata*' because the workman earlier approached this Court against the aforesaid termination order, which was dismissed by this Court. Further, the second reference on the same cause of action is badly time barred at this stage. The present claim statement is bad for non-joinder of necessary party. The workman was engaged as well as his services were terminated by the contractor M/s Enterclimex Security Co. Pvt. Ltd. The contractor who is necessary party in the present litigation has not been impleaded as a party.

4. Further on merits, it is stated that no fresh cause of action has arisen against the management. The pleas taken by the workman are un-founded. The workman was not engaged by the answering management. As per agreement executed with the contractor, persons engaged by the contractor were / are employees of the contractor for all intents and purposes. The relevant part of contract agreement is re-produced as under :—

"Contract agreement read with clause 10(B.1). The persons deployed by the contractor for work in Government Medical College Hospital, Sector-32, Chandigarh shall be the employees of the contractor for all intents and purposes and in no case, there shall be a relationship of employer and employees between the said persons and the Institute. Clause 10(B.3) provides that the contractor shall ensure that all the employees should get minimum wages and other benefits as are admissible under various Labour Laws. As such no liability of any contractual worker lies with this institute."

The answering management did not issue any appointment letter to the workman. As such, there is no employer-employee relationship between the answering management and workman.

5. The order passed in CWP No.8472 of 2002 and interim order(s) passed in LPA No.426 of 2015 have no relation or nexus with the issue(s) now sought to be raised by the workman. In the said litigation, the issue was / is regarding rate of wages or wage rate to be paid to the persons engaged by the contractor (s) / outsourcing agency / agencies. The prayer of the workman in the claim petition filed before the Authority under The Minimum Wages Act, U.T, Chandigarh was limited to the payment of difference of wages between the minimum rates of wages notified by the Chandigarh Administration and the wage actually paid to the workman by the contractor challenging the termination order and claiming re-instatement was not the issue in said litigation. The Hon'ble High Court had directed to ensure the Payment of Minimum Wages in view of the statutory provisions contained in The Minimum Wages Act and did not hold that the workmen are employee of the answering management and there was / is employee-employer relationship between the answering management and workman. In para 3 of legal notice dated 13.08.2018 the workman himself has admitted that his claim against termination of his services by the contractor vide letter dated 31.12.1997 was rejected by the Tribunal. The aforesaid order in CWP No. 8472 has not attained finality and stand challenged in LPA No.426/2015 which is pending for adjudication and only interim orders are passed in said LPA. Said interim order is of no avail to the workman. The workman was employed as well as his services were terminated by the contractor and not by the answering management. Thus, question of regularisation does not arise, especially when the workman is not working in the GMCH and has not placed on record any document / letter to show that he was ever appointed by the answering management. The workman has not given any details of so called representation, therefore answering management is not in a position to respond the averments made and reserve its right to respond and reply as and when the workman specify or attach the so-called representations. The persons engaged by the contractor or outsourcing agency are employees of the contractor concerned and not of the answering management. The contractor appoints the Attendant(s) on contract basis through outsource at their own. Therefore, the workmen were employees of the contractor concerned for all intents and purposes. The answering management has nothing to do or has no role in the engagement and / or termination by the contractor. Further, the workman earlier had approached this Court against the termination by the contractor. The said claim / petition was dismissed. As such, the pleas sought to be advanced by the workman that junior had been retained carry no credence and is / are of no avail to the workman. The claim putforth by the workman through his counsel by way of legal notice dated 13.08.20218 was duly examined and a detailed reply dated 26.11.2019 was sent to the workman's counsel rejecting his claim. It is denied for want of knowledge that workman is not gainfully employed. The present claim statement is abuse of law. The reliance being placed upon orders passed in CWP and LPA are no avail to the workman when the workman has already availed the remedy against his termination and this Tribunal dismissed his claim statement which has now attained finality. That being so, the present claim statement is not maintainable and barred by principle of *res-judicata* and barred by limitation. The territorial jurisdiction of the Court is not disputed. Rest of the

averments of claim statement are denied as wrong and prayer is made that claim statement may be dismissed with costs being not legally maintainable and devoid of merits.

6. The workman filed replication wherein the contents of written reply except admitted facts, are denied as wrong and averments of claim statement are reiterated.

7. From the pleadings of the parties, following issues were framed vide order dated 04.03.2022 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the claim of the workman is barred by principle of *res-judicata* ? OPM
3. Whether the claim of the workman is time barred ? OPM
4. Whether the claim of the workman is bad for non-joinder of necessary party ? OPM
5. Relief.

8. In evidence workman Bikram Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 20.04.2023 Learned Representative for the workman tendered documents Exhibit 'W1', Exhibit 'W2' and Mark 'A' to Mark 'E'.

Exhibit 'W1' is the certified copy of Execution Application bearing filing No. 2578/2016 before the court of Ld. CJM, Chandigarh, titled as Shri Ajay Kumar & Ors. Vs Govt. Medical College & Hospital, Sector 32, Chandigarh & Ors. seeking to execute the order dated 26.02.1999 in Application No.10/1998 passed by the court of Shri S. S. Chauhan, Authority under the Minimum Wages Act and further in view of the order dated 19.03.2015 passed by the Hon'ble High Court in CMs-848 and 849-LPA-2015 in/and LPA No.426 of 2015.

Exhibit 'W2' is certified copy of zimni order dated 11.07.2016, 23.08.2016, 01.10.2016, 09.11.2016, 28.11.2016, 07.12.2016, 15.12.2016, 05.12.2016, 21.12.2016, 03.01.2017, 16.01.2017, 21.01.2017, 04.02.2017, 01.03.2017, 05.04.2017, 29.04.2017, 30.05.2017, 31.07.2017, 29.09.2017, 02.12.2017, 06.12.2017 relating to the court of Shri Akashdeep Mahajan, Addl. Civil Judge (Sr. Div.), Chandigarh, pertaining to execution application filing No. 2578 of 2016.

Mark 'A' is photocopy of application dated nil moved by workmen Sohan Singh & Ors. to G.M.C.H. through Shri S.K. Guleria, Advocate regarding joining report of 18 workmen.

Mark 'B' is photocopy of order dated 05.12.1995 of Medical Superintendent, G.M.C.H, Chandigarh.

Mark 'C' is photocopy of joining report dated 03.05.1995 of Bikram Singh S/o Surjan Singh.

Mark 'D' is photocopy of joining report dated 08.05.1995 of Sohan Singh.

Mark 'E' is photocopy of joining report dated 03.05.1995 of Lalit Kumar S/o Ramanand.

9. On 02.05.2023 Learned Representative for the workman tendered document Exhibit 'W3' i.e. copy of order dated 19.03.2015 passed by the Hon'ble High Court in CMs-848 and 849-LPA-2015 in/and LPA No. 426 of 2015 titled as Govt. Medical College & Hospital, Chandigarh Versus Authority appointed under Minimum Wages Act and closed the evidence of the workman in affirmative.

10. On the other hand, management examined MW1 Sanjay Kumar - Senior Assistant, Establishment Branch IV, GMCH, Sector 32, Chandigarh who tendered his affidavit Exhibit 'MW1/A'.

11. The management also examined MW2 Surinder - Junior Assistant, Establishment Branch - IV, GMCH, Sector 32, Chandigarh, who tendered his affidavit Exhibit 'MW2/A' along with document Exhibit 'MW2/1' i.e. copy of letter dated 31.12.1997 issued by Chief Controller for Enterclimax Security to The Director Principal, GMCH, Sector 32, Chandigarh relating to the subject of removal of the contractual Ward Attendants.

12. On 03.07.2023 Learned Law Officer for the management closed the evidence.

13. I have heard the arguments of Learned Representative for the workman and Learned Law Officer for the management and perused the judicial file. My issue-wise finding are as below :—

Issue No.1 & 2 :

14. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion. Onus to prove issue No.1 is on the workman and onus to prove issue No. 2 is on the management.

15. To prove its case, workman Bikram Singh examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. To support his oral version Learned Representative for the workman referred documents Exhibit 'W1' to Exhibit 'W3' and Mark 'A' to Mark 'E'.

16. To rebut the case of the workman, management examined MW1 Sanjay Kumar, who vide his affidavit Exhibit 'MW1/A' deposed the entire contents of written reply which are not reproduced here for the sake of brevity.

17. For corroboration Learned Law Officer for the management referred to testimony of MW2 Surinder, who vide his affidavit Exhibit 'MW2/A', apart from the contents of written reply, deposed that these cases are very old i.e. way back of year 1995-96 and the dealing official / Incharge of Establishment - IV Branch had supplied the record available for drafting reply in the instant matter to legal cell. No such joining report, salary disbursement and muster roll since 1995 of workman is traceable. As per record, the workman was deployed on contract basis through outsource by the contractor M/s National Security & Allied Services, Jalandhar. Therefore, all the record of outsource employee, is concerned with the contractor and termination by contractor M/s Enterclimax Security Co. Pvt. Ltd. To support oral version of MW2, Learned Law Officer referred Exhibit 'MW2/1'.

18. From the oral as well as documentary evidence led by the parties, it comes out that the workman was appointed against the post of OPD Attendant through contractor National Security & Allied Services, Head Office Punjab (as mentioned in the legal notice dated 13.08.2018 relied upon by the workman). The workman has alleged that his services were terminated without issuing any show cause notice, charge sheet or without following the mandatory provisions of the ID Act. The workman in his claim statement did not mention the date of appointment and date of termination of his services. However, it is own case of the workman that previously he filed a claim statement before the Labour Court / Industrial Tribunal, U.T. Chandigarh challenging his termination order and the said claim statement / industrial dispute reference was dismissed by this Court (in para 3 of legal notice dated 13.08.2018, relied upon by the workman, the date of award passed by the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh is mentioned as 05.03.2007). In the entire pleadings the workman did not mention the particular and details of the previous claim statement wherein he had challenged his termination order. The workman also did not disclose the particular of said claim statement and also did not mention the date of passing of Award vide which the aforesaid claim statement / ID Act has declined by this Court. However, from the copy of legal notice dated 13.08.2018 (relied upon by the workman) in para 3 it is mentioned that his clients filed a case before Labour Commissioner, U.T. Chandigarh for terminating their services. The reference was sent to the appropriate Government of U.T. Chandigarh and reference was also sent to the Labour Court for adjudication but their claim was dismissed by the Labour Court-cum-Industrial Tribunal, Chandigarh vide order dated 05.03.2007. The workman did not place on record the copy of pleadings in the previous industrial dispute reference decided vide Award dated 05.03.2007 by this Court and also did not place on record copy of the said Award dated 05.03.2007. However, the fact remains that the workman in previous industrial dispute reference challenged his termination order and the said previous industrial dispute reference was dismissed by this Labour Court-cum-Industrial Tribunal vide order dated 05.03.2007. Till date the workman has not challenged the order / Award dated 05.03.2007, thus the same has become final.

19. It is own plea of the workman that he was appointed to the post of OPD Attendant by the contractor and later on the contractor left. The workman in the claim statement did not mention up to which year he remained under the contractor or in which month or year the contractor left. However, when put to cross-examination the workman states that he worked as outsource employee in GMCH up to March 1998, he refused to work under new outsource agency, therefore, he was terminated from job. He was not issued any termination letter or relieving letter by the GMCH, Sector 32, Chandigarh. After termination he filed a case seeking payment of minimum wages before Assistant Labour Commissioner, U.T. Chandigarh. The workman did not plead that till what / which date he was paid salary by the contractor.

20. The workman has alleged that although his previous claim statement whereby he challenged the termination order and sought reinstatement was dismissed by this Court but now present cause of action arises in his favour in view of the interim order passed by the Hon'ble High Court in LPA No.426/2015. Learned Representative for the workman argued that the workman filed claim application before the Assistant Labour Commissioner, U.T. Chandigarh under the Minimum Wages Act, which was allowed by the Assistant Labour Commissioner. The management challenged the order of Assistant Labour Commissioner by filing CWP No.8472 of 2002 which was dismissed. Thereafter management of GMCH filed LPA No.426/2015 before the Hon'ble High Court wherein interim order has passed and direction was issued to the management / GMCH to pay arrears of ₹17,982/- to the workman. The management paid the said arrears to the workman by cheque and said amount was received by the workman in the Court of CJM, Chandigarh. LPA is pending. Learned Representative for the workman laid much stress upon the fact that since the payment is made by management of GMCH to the workman, therefore the previous order / Award dated 05.03.2007, whereby the claim of the workman challenging termination order and seeking reinstatement was dismissed has become redundant. The workman has become employee of GMCH / management No.1 & 2 therefore entitled to regularisation of his services.

21. On the other hand, Learned Law Officer for the management argued that claim application before the ALC is limited to the payment of difference of wages between the minimum rate of wages notified by the Chandigarh Administration and the wage actually paid to the workman by the contractor. The termination order was neither under challenge nor an issue before the ALC. The payment of difference of wages made by the management in compliance with the direction of Hon'ble High Court in LPA No.426/2015 in no manner has any connection with the termination or regularisation of services of the workman. To my opinion, it is undeniable fact that the workman filed claim application before the ALC, U.T. Chandigarh seeking recovery of difference of wages of Minimum Wages Act and in the said case neither the termination order was under challenge nor in issue. The matter confined in claim application before the ALC was payment of difference of wages only. In this regard, AW1 in his cross-examination stated that after termination he filed a case seeking payment of wages before the ALC, U.T. Chandigarh. The workman has placed on record copy of order dated March 19, 2015 passed by the Hon'ble High Court in CMs 848 and 849 - LPA-2015 in / and LPA No. 426/2015 titled as Government Medical College & Hospital, Chandigarh Versus Authority appointed under the Minimum Wages Act vide Exhibit 'W3'. The relevant portion of Exhibit 'W3' is reproduced as below :—

"The Chandigarh Administration is impleaded as a party. It shall bring all the necessary notifications relating to the applicability of the Minimum Wages Act to the Government Medical College & Hospital, Sector-32, Chandigarh-appellant.

In the meantime, the appellant shall make the payment due to those who had filed execution on furnishing necessary surety for restitution of the amount or excess amount, if any, to the satisfaction of the executing authority.

List for hearing on 14.07.2015."

Admittedly the LPA No.426/2015 is pending before the Hon'ble High Court. Exhibit 'W2' is the copy of all the zimni orders passed in the execution proceedings titled as **Ajay Kumar & Others Versus GMCH-32, Chandigarh**

before the Court of ACJ(SD). The relevant portion of order dated 07.12.2016 of ACJ(SD), Chandigarh is reproduced as below :—

"Sh. Yadwinder Singh, Law Officer, GMCH-32 Chandigarh for the respondents no. 1 & 2 suffered a statement that he has brought 29 demand drafts total amounting to Rs.5,21,438/- issued in favour of 29 persons i.e., decree holders mentioned in the execution application as per the detailed description given in letter dated 02.11.2016 which is already Ex.PX. Kindly placed on record all the 29 demand drafts as mentioned in Ex.PX and it is requested that the demand drafts shall be handed over to the decree holders on their furnishing surety as per the orders of Hon'ble High Court, Chandigarh. In view of above, the above said demand drafts are taken and Ahlmad of this court is directed to tagged the above said drafts in a proper way.

Learned counsel for the applicant undertake to furnish surety bonds within a week in view of order passed by the Hon'ble High Court, Chandigarh. Statement recorded separately. Now, to come up on 15.12.2016 for furnishing the security by the applicants."

22. It is undeniable fact that all the applicants / DHs of execution proceedings furnished requisite surety and the amount of ₹17,982/- each were released to them in the form of demand draft. Moreover, it is own case of the workman that in compliance with the interim order of Hon'ble High Court passed in LPA No.426/2015 the GMCH, Sector 32 made payment which was received by the workman through the executing Court of CJM / ACJ(SD), Chandigarh.

23. Now the question before this Court is if the interim order dated 19.03.2015 / Exhibit 'W3' in any manner relate to the termination or regularisation of service of the workman. Answer is 'No' because payment of difference of wages to the GMCH, Sector 32 to the workman in compliance with the order of Hon'ble High Court in the matter relating to payment of wages under Minimum Wages Act, cannot be interpreted to mean that by making payment by GMCH / or receiving payment by the workman of difference of wages, the termination order will become invalid of its own or the previous Award dated 05.03.2007 passed by Labour Court, Chandigarh dismissing the IDR / claim statement of the workman seeking to set aside termination order, will become redundant. The termination of service, reinstatement, regularisation does not fall within the purview of Minimum Wages Act, hence order Exhibit 'W3' in no manner has any impact on the termination of the workman. The GMCH, Sector 32, Chandigarh / management No.1 & 2 neither issued any appointment letter nor termination order to the workman. Learned Representative for the workman raised objection to the termination order dated 31.12.1997 / Exhibit 'MW2/1' brought into evidence by MW2. Exhibit 'MW2/1' is the letter of termination the services of the workman by the employer / contractor Enterclimex w.e.f. 31.12.1997. The workman has not impleaded the employer Enterclimex as party to the claim statement, thus claim statement is bad for non-joinder of necessary party. Above all during course of arguments Learned Representative of the workman failed to controvert the fact that in previous IDR the termination order vide letter dated 31.12.1997 / Exhibit 'M2/1' was under challenge. If the termination Exhibit 'MW2/1' is ignored, then also workman has failed to prove that his services were terminated by management No.1 & 2 / GMCH Sector 32, Chandigarh. AW1 in his cross-examination stated that he worked as outsource employee in GMCH-32, Chandigarh up to March, 1998. He refused to work under the new agency, therefore he was terminated from the job. He was not issued any termination letter by GMCH, Sector 32, Chandigarh. The aforesaid version of AW1 would prove that from the date of appointment till termination of service he was working with GMCH, Sector 32, Chandigarh being outsource employee under the contractor. In this manner the workman was employee of the contractor not GMCH, Sector 32, Chandigarh. So the question of termination of services of the contractual employee by the

GMCH, Sector 32, Chandigarh does not arise. The contractual employee to seek regularisation of services must come through the selection process. Here it is not the case of the workman that they have qualified any selection process. Hon'ble High Court of Delhi in case of ***Desh Deepak Srivastava Versus Delhi High Court & Another, CWP (C) No.9570/2015*** held that a contractual employee cannot claim any right to regularisation or absorption of services, if continued on an *ad-hoc* for decades.

24. Moreover, the issue of termination of the services of the workman have already been adjudicated upon by this Labour Court & Industrial Tribunal, U.T. Chandigarh vide Award dated 05.03.2007 vide which the claim of the workman seeking to set aside termination order, was discussed. The workman did not challenge the Award dated 05.03.2007 before the competent Court of law. Therefore, the Award dated 05.03.2007 has attained finality. The workman is not entitled to re-agitate the same issue which is already decided by the competent court and which has become final. Consequently, the present claim is barred by principle of *res-judicata* under Section 11 of CPC.

25. Accordingly, issue No.1 is decided against the workman and in favour of the management. Issue No.2 is decided in favour of the management and against the workman.

Issue No. 3 :

26. Onus to prove this issue is on the management.

27. The workman has alleged that his services were terminated in the year 1998. He raised 2nd time industrial dispute by raising demand notice in the year 2019 and presented the present claim on 25.08.2020 i.e. after about 22 years of raising demand notice. Thus, the present claim statement is barred by limitation.

28. Accordingly, this issue is decided in favour of the management and against the workman.

Issue No. 4 :

29. Onus to prove this issue is on the management.

30. The contractor / (last contractor i.e. Enterclimex) was the employer of the workman. The workman has challenged his termination of services without impleading his employer, who was a necessary party. Thus, the present claim statement is bad for non-joinder of necessary party.

31. Accordingly, this issue is decided in favour of the management and against the workman.

Relief :

32. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 03-07-2023.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 11th September 2023

No. 13/2/13-HII(2)-2023/13236.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 45/2020 dated 03.07.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

JAGAT RAM SHARMA S/O SH. PARAS RAM SHARMA, R/O HOUSE NO.308, T/ARKHARI
SUSIYA PIPLU GHAT, SOLAN, HIMACHAL PRADESH. (Workman)

AND

1. THE DIRECTOR /PRINCIPAL, GOVT. MEDICAL COLLEGE AND HOSPITAL
EDUCATION & RESEARCH, CHANDIGARH ADMINISTRATION, SECTOR 32 UT
CHANDIGARH.
2. GOVERNMENT OF INDIA, MINISTRY OF FAMILY AND HEALTH WELFARE,
SECTION 2 THROUGH ITS SECRETARY, NEW DELHI. (Management)

AWARD

1. Jagat Ram Sharma, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that earlier workman filed petition under Section 2-A of the ID Act, reference was sent to the Chandigarh Administration, who further sent referred for adjudication to the Labour Court, U.T. Chandigarh and the same was declined by the then Presiding Officer of the Labour Court, and contractual employee was held not to be employee of Government Medical College & Hospital (GMCH). The present case is filed on the basis of fresh cause of action and on different footings as below:—

- A. The workman was appointed through the contractor against the post of Ward Attendant. Later on the contractor left. The workman continues to serve more than 240 days continuously without any break. The workman was paid salary by the Director of the GMCH. Thereafter, the workman started claiming regularisation of his services but his services were orally terminated without any show cause notice, charge sheet or without following mandatory provisions of the ID Act.
- B. The workman filed case before the Assistant Labour Commissioner (ALC) under the Minimum Wages Act, including other aggrieved workers. The claim was allowed. The Award was passed by Sh. Hoshiar Singh, the then ALC. The management challenged the Award of ALC and filed CWP No. 8472 of 2002 before the Hon'ble High Court of Punjab & Haryana. The writ petition was dismissed. The management/GMCH filed LPA No.426 of 2015, vide which the Hon'ble High Court directed the management/GMCH to pay an amount of ₹17,982/-. The said amount was paid through the Court of Chief Judicial Magistrate, Chandigarh, which the workman received from the Court in view of the Award passed by ALC. In this way workman became the employee of GMCH i.e. management No. 1 & 2. The Award passed by the then Labour Court, U.T. Chandigarh became redundant. The SLP is still pending for adjudication before the Hon'ble High Court.
- C. The workman along with others workmen moved various representations to the management No.1 & 2 for regularisation of their services, but nothing was done by the management.

- D. The junior workmen to the workman were retained by the management and they are still retained by the management and they are still continuing. Even thereafter, many posts were filled by the management without considering the case of the workman. There are many hospitals under the jurisdiction of Chandigarh Administration, particularly in Sector 48 and many vacancies and many posts of Lt. Attendant are still lying vacant. The management No. 1 & 2 are likely to start recruitment. The workman deserves to be appointed against the post.
- E. Finding no other alternative, workman sent registered legal notice to the management and Union of India. The Union of India vide its letter dated 21.08.2019 replied the legal notice.
- F. The whole action on the part of the management in termination, the services of the workman is illegal, unlawful, unconstitutional and contrary to the mandatory provisions of the ID Act. Said illegal termination deserves to be set aside and the workman deserves to be reinstated with continuity of service, full back wages and consequential benefits.
- G. The workman is not gainfully employed anywhere in India with Government or semi-Government or private organisation.
- H. The cause of action arose in the year 1996, when the workman was employed Ward Attendant. It further arose when services of the workman terminated illegally without following the mandatory provisions of law. Further cause of action arose when ALC passed the Award in favour of the workman including other workmen and it again arose when department filed CWP, which was dismissed and the department filed LPA and in LPA Hon'ble High Court directed the department to pay ₹17,982/- which was paid through cheque by the management. It further arose when ALC directed the workman to approach the Labour Court. The cause of action is recurring.

The claim statement is well within territorial jurisdiction of the present Court. Prayer is made that termination order may be set aside being unlawful, unconstitutional, illegal, null, void and void ab-initio. The workman may be reinstated against the same post with continuity of services, full back wages with continuity of service, seniority and all other consequential benefits.

3. On notice management No.1 & 2 contested the claim statement by filing joint written reply wherein preliminary objections are raised on the ground that the claim statement in fact is a second reference for the same cause of action, praying for setting aside termination of the workman by contractor M/s Enterclimax Security Pvt. Ltd. vide letter dated 31.12.1997 and claiming reinstatement is not legally maintainable being barred by '*res-judicata*' because the workman earlier approached this Court against the aforesaid termination order, which was dismissed by this Court. Further, the second reference on the same cause of action is badly time barred at this stage. The present claim statement is bad for non-joinder of necessary party. The workman was engaged as well as his services were terminated by the contractor M/s Enterclimax Security Co. Pvt. Ltd. The contractor who is necessary party in the present litigation has not been impleaded as a party.

4. Further on merits, it is stated that no fresh cause of action has arisen against the management. The pleas taken by the workman are un-founded. The workman was not engaged by the answering management. As per agreement executed with the contractor, persons engaged by the contractor were/are employees of the contractor for all intents and purposes. The relevant part of contract agreement is re-produced as under :—

"Contract agreement read with clause 10(B.I). The persons deployed by the contractor for work in Government Medical College Hospital, Sector-32, Chandigarh shall be the employees of the contractor for all intents and purposes and in no case, there shall be

a relationship of employer and employees between the said persons and the Institute. Clause 10(B.3) provides that the contractor shall ensure that all the employees should get minimum wages and other benefits as are admissible under various Labour Laws. As such no liability of any contractual worker lies with this institute."

The answering management did not issue any appointment letter to the workman. As such, there is no employer-employee relationship between the answering management and workman.

5. The order passed in CWP No.8472 of 2002 and interim order(s) passed in LPA No.426 of 2015 have no relation or nexus with the issue(s) now sought to be raised by the workman. In the said litigation, the issue was/is regarding rate of wages or wage rate to be paid to the persons engaged by the contractor (s) / outsourcing agency/agencies. The prayer of the workman in the claim petition filed before the Authority under The Minimum Wages Act, U.T, Chandigarh was limited to the payment of difference of wages between the minimum rates of wages notified by the Chandigarh Administration and the wage actually paid to the workman by the contractor challenging the termination order and claiming re-instatement was not the issue in said litigation. The Hon'ble High Court had directed to ensure the Payment of Minimum Wages in view of the statutory provisions contained in The Minimum Wages Act and did not hold that the workmen are employee of the answering management and there was/is employee-employer relationship between the answering management and workman. In para 3 of legal notice dated 13.08.2018 the workman himself has admitted that his claim against termination of his services by the contractor vide letter dated 31.12.1997 was rejected by the Tribunal. The aforesaid order in CWP No. 8472 has not attained finality and stand challenged in LPA No.426/2015 which is pending for adjudication and only interim orders are passed in said LPA. Said interim order is of no avail to the workman. The workman was employed as well as his services were terminated by the contractor and not by the answering management. Thus, question of regularisation does not arise, especially when the workman is not working in the GMCH and has not placed on record any document/letter to show that he was ever appointed by the answering management. The workman has not given any details of so called representation, therefore answering management is not in a position to respond the averments made and reserve its right to respond and reply as and when the workman specify or attach the so-called representations. The persons engaged by the contractor or outsourcing agency are employees of the contractor concerned and not of the answering management. The contractor appoints the Attendant(s) on contract basis through outsource at their own. Therefore, the workmen were employees of the contractor concerned for all intents and purposes. The answering management has nothing to do or has no role in the engagement and/or termination by the contractor. Further, the workman earlier had approached this Court against the termination by the contractor. The said claim/petition was dismissed. As such, the pleas sought to be advanced by the workman that junior had been retained carry no credence and is/are of no avail to the workman. The claim put forth by the workman through his counsel by way of legal notice dated 13.08.20218 was duly examined and a detailed reply dated 26.11.2019 was sent to the workman's counsel rejecting his claim. It is denied for want of knowledge that workman is not gainfully employed. The present claim statement is abuse of law. The reliance being placed upon orders passed in CWP and LPA are no avail to the workman when the workman has already availed the remedy against his termination and this Tribunal dismissed his claim statement which has now attained finality. That being so, the present claim statement is not maintainable and barred by principle of *res-judicata* and barred by limitation. The territorial jurisdiction of the Court is not disputed. Rest of the averments of claim statement are denied as wrong and prayer is made that claim statement may be dismissed with costs being not legally maintainable and devoid of merits.

6. The workman filed replication wherein the contents of written reply except admitted facts, are denied as wrong and averments of claim statement are reiterated.

7. From the pleadings of the parties, following issues were framed vide order dated 04.03.2022:—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW

2. Whether the claim of the workman is barred by principle of *res-judicata* ? OPM
3. Whether the claim of the workman is time barred ? OPM
4. Whether the claim of the workman is bad for non-joinder of necessary party ? OPM
5. Relief.

8. In evidence workman Jagat Ram Sharma examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 20.04.2023 Learned Representative for the workman tendered documents Exhibit 'W1', Exhibit 'W2' and Mark 'A' to Mark 'E'.

Exhibit 'W1' is the certified copy of Execution Application bearing filing No. 2578/2016 before the court of Ld. CJM, Chandigarh, titled as Shri Ajay Kumar & Ors. Vs Govt. Medical College & Hospital, Sector 32, Chandigarh & Ors. seeking to execute the order dated 26.02.1999 in Application No. 10/1998 passed by the court of Shri S. S. Chauhan, Authority under the Minimum Wages Act and further in view of the order dated 19.03.2015 passed by the Hon'ble High Court in CMs-848 and 849-LPA-2015 in/and LPA No. 426 of 2015.

Exhibit 'W2' is certified copy of zimni order dated 11.07.2016, 23.08.2016, 01.10.2016, 09.11.2016, 28.11.2016, 07.12.2016, 15.12.2016, 05.12.2016, 21.12.2016, 03.01.2017, 16.01.2017, 21.01.2017, 04.02.2017, 01.03.2017, 05.04.2017, 29.04.2017, 30.05.2017, 31.07.2017, 29.09.2017, 02.12.2017, 06.12.2017 relating to the court of Shri Akashdeep Mahajan, Addl. Civil Judge (Sr. Div.), Chandigarh, pertaining to execution application filing No. 2578 of 2016.

Mark 'A' is photocopy of application dated nil moved by workmen Sohan Singh & Ors. to G.M.C.H. through Shri S.K. Guleria, Advocate regarding joining report of 18 workmen.

Mark 'B' is photocopy of order dated 05.12.1995 of Medical Superintendent, G.M.C.H, Chandigarh.

Mark 'C' is photocopy of joining report dated 03.05.1995 of Bikram Singh S/o Surjan Singh.

Mark 'D' is photocopy of joining report dated 08.05.1995 of Sohan Singh.

Mark 'E' is photocopy of joining report dated 03.05.1995 of Lalit Kumar S/o Ramanand.

9. On 02.05.2023 Learned Representative for the workman tendered document Exhibit 'W3' i.e. copy of order dated 19.03.2015 passed by the Hon'ble High Court in CMs-848 and 849-LPA-2015 in/and LPA No.426 of 2015 titled as Govt. Medical College & Hospital, Chandigarh Versus Authority appointed under Minimum Wages Act and closed the evidence of the workman in affirmative.

10. On the other hand, management examined MW1 Sanjay Kumar - Senior Assistant, Establishment Branch IV, GMCH, Sector 32, Chandigarh who tendered his affidavit Exhibit 'MW1/A'.

11. The management also examined MW2 Surinder - Junior Assistant, Establishment Branch - IV, GMCH, Sector 32, Chandigarh, who tendered his affidavit Exhibit 'MW2/A' along with document Exhibit 'MW2/1' i.e. copy of letter dated 31.12.1997 issued by Chief Controller for Enterclimax Security to The Director Principal, GMCH, Sector 32, Chandigarh relating to the subject of removal of the contractual Ward Attendants.

12. On 03.07.2023 Learned Law Officer for the management closed the evidence.

13. I have heard the arguments of Learned Representative for the workman and Learned Law Officer for the management and perused the judicial file. My issue-wise finding are as below :—

Issue No. 1 & 2 :

14. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 is on the management.

15. To prove its case, workman Jagat Ram Sharma examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. To support his oral version Learned Representative for the workman referred documents Exhibit 'W1' to Exhibit 'W3' and Mark 'A' to Mark 'E'.

16. To rebut the case of the workman, management examined MW1 Sanjay Kumar, who vide his affidavit Exhibit 'MW1/A' deposed the entire contents of written reply which are not reproduced here for the sake of brevity.

17. For corroboration Learned Law Officer for the management referred to testimony of MW2 Surinder, who vide his affidavit Exhibit 'MW2/A', apart from the contents of written reply, deposed that these cases are very old i.e. way back of year 1995-96 and the dealing official/Incharge of Establishment-IV Branch had supplied the record available for drafting reply in the instant matter to legal cell. No such joining report, salary disbursement and muster roll since 1995 of workman is traceable. As per record, the workman was deployed on contract basis through outsource by the contractor M/s National Security & Allied Services, Jalandhar. Therefore, all the record of outsource employee, is concerned with the contractor and termination by contractor M/s Enterclimex Security Co. Pvt. Ltd. To support oral version of MW2, Learned Law Officer referred Exhibit 'MW2/1'.

18. From the oral as well as documentary evidence led by the parties, it comes out that the workman was appointed against the post of Ward Attendant through contractor National Security & Allied Services, Head Office Punjab (as mentioned in the legal notice dated 13.08.2018 relied upon by the workman). The workman has alleged that his services were terminated without issuing any show cause notice, charge sheet or without following the mandatory provisions of the ID Act. The workman in his claim statement did not mention the date of appointment and date of termination of his services. However, it is own case of the workman that previously he filed a claim statement before the Labour Court / Industrial Tribunal, U.T. Chandigarh challenging his termination order and the said claim statement / industrial dispute reference was dismissed by this Court (in para 3 of legal notice dated 13.08.2018, relied upon by the workman, the date of award passed by the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh is mentioned as 05.03.2007). In the entire pleadings the workman did not mention the particular and details of the previous claim statement wherein he had challenged his termination order. The workman also did not disclose the particular of said claim statement and also did not mention the date of passing of Award vide which the aforesaid claim statement/ID Act has declined by this Court. However, from the copy of legal notice dated 13.08.2018 (relied upon by the workman) in para 3 it is mentioned that his clients filed a case before Labour Commissioner, U.T. Chandigarh for terminating their services. The reference was sent to the appropriate Government of U.T. Chandigarh and reference was also sent to the Labour Court for adjudication but their claim was dismissed by the Labour Court-cum-Industrial Tribunal, Chandigarh vide order dated 05.03.2007. The workman did not place on record the copy of pleadings in the previous industrial dispute reference decided vide Award dated 05.03.2007 by this Court and also did not place on record copy of the said Award dated 05.03.2007. However, the fact remains that the workman in previous industrial dispute reference challenged his termination order and the said previous industrial dispute reference was dismissed by this Labour Court-cum-Industrial Tribunal vide order dated 05.03.2007. Till date the workman has not challenged the order / Award dated 05.03.2007, thus the same has become final.

19. It is own plea of the workman that he was appointed to the post of Ward Attendant by the contractor and later on the contractor left. The workman in the claim statement did not mention up to which year he remained under the contractor or in which month or year the contractor left. However, when put to cross-examination the workman states that he worked as outsource employee in GMCH up to March 1998, he refused to work under new outsource agency, therefore, he was terminated from job. He was not issued any termination letter or relieving letter by the GMCH, Sector 32, Chandigarh. After termination he filed a case seeking payment of minimum wages before Assistant Labour Commissioner, U.T. Chandigarh. The workman did not plead that till what / which date he was paid salary by the contractor.

20. The workman has alleged that although his previous claim statement whereby he challenged the termination order and sought reinstatement was dismissed by this Court but now present cause of action arises in his favour in view of the interim order passed by the Hon'ble High Court in LPA No. 426/2015. Learned Representative for the workman argued that the workman filed claim application before the Assistant Labour Commissioner, U.T. Chandigarh under the Minimum Wages Act, which was allowed by the Assistant Labour Commissioner. The management challenged the order of Assistant Labour Commissioner by filing CWP No. 8472 of 2002 which was dismissed. Thereafter management of GMCH filed LPA No. 426/2015 before the Hon'ble High Court wherein interim order has passed and direction was issued to the management /GMCH to pay arrears of ₹17,982/- to the workman. The management paid the said arrears to the workman by cheque and said amount was received by the workman in the Court of CJM, Chandigarh. LPA is pending. Learned Representative for the workman laid much stress upon the fact that since the payment is made by management of GMCH to the workman, therefore the previous order / Award dated 05.03.2007, whereby the claim of the workman challenging termination order and seeking reinstatement was dismissed has become redundant. The workman has become employee of GMCH / management No.1 & 2 therefore entitled to regularisation of his services.

21. On the other hand, Learned Law Officer for the management argued that claim application before the ALC is limited to the payment of difference of wages between the minimum rate of wages notified by the Chandigarh Administration and the wage actually paid to the workman by the contractor. The termination order was neither under challenge nor an issue before the ALC. The payment of difference of wages made by the management in compliance with the direction of Hon'ble High Court in LPA No. 426/2015 in no manner has any connection with the termination or regularisation of services of the workman. To my opinion, it is undeniable fact that the workman filed claim application before the ALC, U.T. Chandigarh seeking recovery of difference of wages of Minimum Wages Act and in the said case neither the termination order was under challenge nor in issue. The matter confined in claim application before the ALC was payment of difference of wages only. In this regard, AW1 in his cross-examination stated that after termination he filed a case seeking payment of wages before the ALC, U.T. Chandigarh. The workman has placed on record copy of order dated March 19, 2015 passed by the Hon'ble High Court in CMs 848 and 849 - LPA-2015 in /and LPA No.426/2015 titled as Government Medical College & Hospital, Chandigarh Versus Authority appointed under the Minimum Wages Act vide Exhibit 'W3'. The relevant portion of Exhibit 'W3' is reproduced as below :—

"The Chandigarh Administration is impleaded as a party. It shall bring all the necessary notifications relating to the applicability of the Minimum Wages Act to the Government Medical College & Hospital, Sector-32, Chandigarh-appellant.

In the meantime, the appellant shall make the payment due to those who had filed execution on furnishing necessary surety for restitution of the amount or excess amount, if any, to the satisfaction of the executing authority.

List for hearing on 14.07.2015."

Admittedly the LPA No.426/2015 is pending before the Hon'ble High Court. Exhibit 'W2' is the copy of all the zimni orders passed in the execution proceedings titled as **Ajay Kumar & Others Versus GMCH-32**,

Chandigarh before the Court of ACJ(SD). The relevant portion of order dated 07.12.2016 of ACJ(SD), Chandigarh is reproduced as below :—

"Sh. Yadwinder Singh, Law Officer, GMCH-32 Chandigarh for the respondents no. 1 & 2 suffered a statement that he has brought 29 demand drafts total amounting to Rs.5,21,438/- issued in favour of 29 persons i.e., decree holders mentioned in the execution application as per the detailed description given in letter dated 02.11.2016 which is already Ex.PX. Kindly placed on record all the 29 demand drafts as mentioned in Ex.PX and it is requested that the demand drafts shall be handed over to the decree holders on their furnishing surety as per the orders of Hon'ble High Court, Chandigarh. In view of above, the above said demand drafts are taken and Ahlmad of this court is directed to tagged the above said drafts in a proper way.

Learned counsel for the applicant undertake to furnish surety bonds within a week in view of order passed by the Hon'ble High Court, Chandigarh. Statement recorded separately. Now, to come up on 15.12.2016 for furnishing the security by the applicants."

22. It is undeniable fact that all the applicants/DHs of execution proceedings furnished requisite surety and the amount of ₹17,982/- each were released to them in the form of demand draft. Moreover, it is own case of the workman that in compliance with the interim order of Hon'ble High Court passed in LPA No. 426/2015 the GMCH, Sector 32 made payment which was received by the workman through the executing Court of CJM / ACJ(SD), Chandigarh.

23. Now the question before this Court is if the interim order dated 19.03.2015 / Exhibit 'W3' in any manner relate to the termination or regularisation of service of the workman. Answer is 'No' because payment of difference of wages to the GMCH, Sector 32 to the workman in compliance with the order of Hon'ble High Court in the matter relating to payment of wages under Minimum Wages Act, cannot be interpreted to mean that by making payment by GMCH /or receiving payment by the workman of difference of wages, the termination order will become invalid of its own or the previous Award dated 05.03.2007 passed by Labour Court, Chandigarh dismissing the IDR/claim statement of the workman seeking to set aside termination order, will become redundant. The termination of service, reinstatement, regularisation does not fall within the purview of Minimum Wages Act, hence order Exhibit 'W3' in no manner has any impact on the termination of the workman. The GMCH, Sector 32, Chandigarh/ management No.1 & 2 neither issued any appointment letter nor termination order to the workman. Learned Representative for the workman raised objection to the termination order dated 31.12.1997/Exhibit 'MW2/1' brought into evidence by MW2. Exhibit 'MW2/1' is the letter of termination the services of the workman by the employer / contractor Enterclimex w.e.f. 31.12.1997. The workman has not impleaded the employer Enterclimex as party to the claim statement, thus claim statement is bad for non-joinder of necessary party. Above all during course of arguments Learned Representative of the workman failed to controvert the fact that in previous IDR the termination order vide letter dated 31.12.1997/ Exhibit 'M2/1' was under challenge. If the termination Exhibit 'MW2/1' is ignored, then also workman has failed to prove that his services were terminated by management No.1 & 2 / GMCH Sector 32, Chandigarh. AW1 in his cross-examination stated that he worked as outsource employee in GMCH-32, Chandigarh up to March, 1998. He refused to work under the new agency, therefore he was terminated from the job. He was not issued any termination letter by GMCH, Sector 32, Chandigarh. The aforesaid version of AW1 would prove that from the date of appointment till termination of service he was working with GMCH, Sector 32, Chandigarh being outsource employee under the contractor. In this manner the workman was employee of the contractor not GMCH, Sector 32, Chandigarh. So the question of termination of services of the contractual employee by the GMCH, Sector 32, Chandigarh does not arise. The contractual employee to seek regularisation of services must come through the selection process. Here it is not the case of the workman that they have qualified any

selection process. Hon'ble High Court of Delhi in case of ***Desh Deepak Srivastava Versus Delhi High Court & Another, CWP (C) No.9570/2015*** held that a contractual employee cannot claim any right to regularisation or absorption of services, if continued on an ad-hoc for decades.

24. Moreover, the issue of termination of the services of the workman have already been adjudicated upon by this Labour Court & Industrial Tribunal, U.T. Chandigarh vide Award dated 05.03.2007 *vide* which the claim of the workman seeking to set aside termination order, was discussed. The workman did not challenge the Award dated 05.03.2007 before the competent Court of law. Therefore, the Award dated 05.03.2007 has attained finality. The workman is not entitled to re-agitate the same issue which is already decided by the competent court and which has become final. Consequently, the present claim is barred by principle of *res-judicata* under Section 11 of CPC.

25. Accordingly, issue No.1 is decided against the workman and in favour of the management. Issue No.2 is decided in favour of the management and against the workman.

Issue No.3 :

26. Onus to prove this issue is on the management.

27. The workman has alleged that his services were terminated in the year 1998. He raised 2nd time industrial dispute by raising demand notice in the year 2019 and presented the present claim on 25.08.2020 i.e. after about 22 years of raising demand notice. Thus, the present claim statement is barred by limitation.

28. Accordingly, this issue is decided in favour of the management and against the workman.

Issue No.4 :

29. Onus to prove this issue is on the management.

30. The contractor/(last contractor i.e. Enterclimex) was the employer of the workman. The workman has challenged his termination of services without impleading his employer, who was a necessary party. Thus, the present claim statement is bad for non-joinder of necessary party.

31. Accordingly, this issue is decided in favour of the management and against the workman.

Relief :

32. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 03-07-2023.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 11th September, 2023

No. 13/2/28-HII(2)-2023/13238.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 51/2021 dated 19.07.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

ROSHAN LAL S/O SH. RAMESHWAR DUTT, AGED 41 YEARS, RIO # 348, DASHMESH NAGAR, NAYAGAON, KHARAR, S.A.S. MOHALI. (Workman)

AND

M/S MANN FILLING STATION PETROL PUMP, NH 21, SECTOR 49B, CHANDIGARH THROUGH ITS PROPRIETOR/OCCUPIER AND MANAGER. (Management)

AWARD

1. Roshan Lal, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was appointed by the management of M/s Mann Filling Station as Salesman w.e.f. 04.01.2001 with various benefits and commitments with monthly wages of ₹ 6,000/-. The last drawn wages of the workman were ₹13,500/- per month. Since year 2001, the workman had continuously worked up to 13.01.2020 and performed his duties to the best of his ability. In the year 2011, the workman was covered under the ESI Scheme by the management with wrong date of joining. The workman successfully performs his allotted duties as per the instructions of the management. Workman was punctual and honest towards his duties. There was no complaint towards his job and conduct. The management was entirely satisfied with the work & conduct of the workman. On 14.01.2020, the workman reported for duty but the management terminated the services of the workman without giving any prior notice. The management neither issued any memo, charge-sheet nor conducted any inquiry in any manner before termination. The workman several times requested verbally and in writing to the concerned officer of the management, to take him back on duty but the management did not hear his genuine requests. The management has neither offered nor paid notice pay and compensation to the workman. The job of the workman exists as it is till date and junior to the workman are still retained in service by the management. The management has violated Section 25-F, 25-G and 25-H of the ID Act. After illegal termination the workman is totally unemployed and has been facing starvation and other difficulties of an unemployed person. After termination, the workman sent representations to the concerned authorities to the management but all in vain. Prayer is made that termination order may be declared illegal and workman may be reinstated into service with continuity of service along with full back wages and consequential benefits.

3. Notice issued through ordinary process to the management for 09.07.2021 was received back executed by Shri Surinder Sharma, Manager. Despite service, none appeared on behalf of the management. Thus, vide order dated 09.07.2021, the management was proceeded against *ex parte*.

4. In *ex parte* evidence workman Roshan Lal examined himself as AW1 and tendered his affidavit vide Exhibit 'AW1/A' along with photocopies of documents i.e. his ESI details vide Exhibit 'W1', his identity card vide Exhibit 'W2', his ESIC Card bearing I.P. No. 1712495824 vide Exhibit 'W3' and computerised print out of acknowledgment issued by the Chandigarh Police complaint tracking system regarding the police complaint lodged by him on 02.03.2020 vide Exhibit 'W4'. It is pertinent to mention here that original of Exhibit 'W1' to Exhibit 'W3' were produced at the time of recording evidence, which were seen and returned.

5. Workman examined AW2 Gurmeet Singh, Senior Assistant, Office of Employees' State Insurance Corporation, Sector 29, Chandigarh who brought the summoned record i.e. Form 01 relating to M/s Mann Filling Station, Sector 49-B, Chandigarh vide Exhibit 'AW2/1', declaration Form of the workman Exhibit 'AW2/2', Return of contributions under Employees' State Insurance Corporation incorporating details of contribution for the period from April 2011 to September 2011, October 2011 to March 2012, April 2012 to September 2012, October 2012 to March 2013, April 2013 to September 2013, October 2013 to March 2014, April 2014 to September 2014, October 2014 to March 2015, April 2015 to September 2015, October 2015 to March 2016, April 2016 to September 2016, October 2016 to March 2017, April 2017 to September 2017, October 2017 to March 2018, April 2018 to September 2018, October 2018 to March 2019, April 2019 to September 2019 and October 2019 to March 2020 bearing the name of establishment Mann Filling Station, Sector 49-B, Chandigarh vide Exhibit 'AW2/3' to 'AW2/20' respectively, Insurance Policy No. 1712495824 (date of registration 01.07.2009) relating to insured person Roshan Lal issued by Employees' State Insurance Corporation vide Exhibit 'AW2/21', detail of total contribution for the period from 01.10.2010 to 31.03.2020 vide Exhibit 'AW3/22'. On 19.05.2023, workman closed his *ex parte* evidence.

6. I have heard arguments of Learned Representative for the workman and perused the judicial file.

7. In order to prove its case, workman Roshan Lal examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of the claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported his oral version with documents Exhibit 'W1' to Exhibit 'W4'.

8. In order to prove the fact that the workman covered under the ESI Scheme workman examined AW2 Gurmeet Singh, Senior Assistant Office of Employees' State Insurance Corporation, who brought the summoned record vide Exhibit 'AW2/1' to Exhibit 'AW2/22'.

9. From the oral as well as documentary evidence lead by the workman, it is duly proved on record that workman was appointed as Salesman by the management of M/s Mann Filling Station, Petrol Pump, Sector 49-B, Chandigarh w.e.f. 04.01.2001. The management did not issue any written appointment letter to the workman. As proved from the testimony of AW2, the management is registered as employer under the ESIC and the workman is covered under ESI Scheme. The workman has alleged that he was appointed w.e.f. 04.01.2001 but he was covered under the ESI Scheme w.e.f. April 2011 by mentioning his incorrect date of appointment i.e. 01.07.2009 by the management. The plea taken by the workman that his date of appointment i.e. 01.07.2009 is incorrectly mentioned by the management in the declaration form Exhibit 'AW2/2' does not stand prove because the declaration form Exhibit 'AW2/2' apart from the seal and signatures of the Proprietor of the management bears the signatures of workman Roshan Lal in English Language which goes to prove that the workman is a literate person. No literate person of ordinary prudence would sign any document without reading the contents thereof. During his employment with the management, the workman did not raise any objection to the date of appointment so recorded in the declaration form.

10. The workman has alleged that his services were terminated by the management with verbal order on 14.01.2020. From Exhibit 'AW2/22', it is proved that during the period 01.04.2019 to 30.09.2019, the workman worked for 166 days and during the period from 01.10.2019 to 31.03.2020 the workman worked for 93 days. Thus, for the period w.e.f. 01.04.2019 to 31.03.2020 the workman worked for total 259 days. In this manner, the workman has continuously worked for a period of more than 240 days in 12 calendar months preceding the date of his termination. Thus, the workman is covered under Section 25-B of the ID Act. For better appreciation Section 25-B of the ID Act is reproduced as below :—

"25B. Definition of continuous service - For the purposes of this Chapter;-

- (1) *a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or as strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) *where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*
 - (a) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
 - (i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) *two hundred and forty days, in any other case;*
 - (b) *for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
 - (i) *ninety-five days, in the case of workman employed below ground in a mine; and*
 - (ii) *one hundred and twenty days, in any other case.*

Explanation - *For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-*

- (i) *he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;*
- (ii) *he has been on leave with full wages, earned in the previous years;*
- (iii) *he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and*
- (iv) *in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks."*

Since, the workman fulfil the requirement of Section 25-B of the ID Act, thus, the management was required to comply with the conditions precedent to retrenchment of the workman as incorporated in Section 25-F of the ID Act which read as below :—

"25F. Conditions precedent to retrenchment of workmen - *No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-*

- (a) *the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) *the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and*
- (c) *notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

11. In the present case, the workman has alleged that before verbal termination of his services, the management has neither issued one month's prior notice in writing mentioning therein the reasons for retrenchment nor paid notice pay in lieu of notice period nor paid any retrenchment compensation to the workman. Apart from that the management has neither issued any memo nor issues charge-sheet nor conducted any domestic inquiry before terminating the services of the workman. The aforesaid plea of the workman cannot be disbelieved as the management despite service of notice did not bother to contest the claim statement and preferred to be proceeded against ex-parte. Thus, the evidence led by the workman has gone un-rebutted and un-challenged. The termination of services of the workman in violation of the conditions laid down in Section 25-F of the ID Act is illegal. Consequently, the termination order of the services of the workman being illegal is hereby set aside and the workman is held entitled to reinstatement with continuity of services and 50% back wages along with other consequential benefits.

12. In view of the discussion made above, the industrial dispute is ex-parte allowed to the effect that the workman is entitled for reinstatement with continuity of services and 50% back wages along with other consequential benefits. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 19-07-2023.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 11th September, 2023

No. 13/2/11-HII(2)-2023/13240.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 43/2020 dated 03.07.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

MALKIT SINGH S/O LATE MEHAR SINGH R/O HOUSE NO.312, MALOYA COLONY,
CHANDIGARH. (Workman)

AND

1. THE DIRECTOR / PRINCIPAL, GOVT. MEDICAL COLLEGE AND HOSPITAL EDUCATION & RESEARCH, CHANDIGARH ADMINISTRATION, SECTOR 32 UT CHANDIGARH
2. GOVERNMENT OF INDIA MINISTRY OF FAMILY AND HEALTH WELFARE, SECTION 2 THROUGH ITS SECRETARY, NEW DELHI. (Management)

AWARD

1. Malkit Singh, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that earlier workman filed petition under Section 2-A of the ID Act, reference was sent to the Chandigarh Administration, who further sent referred for adjudication to the Labour Court, U.T. Chandigarh and the same was declined by the then Presiding Officer of the Labour Court, and contractual employee was held not to be employee of Government Medical College & Hospital (GMCH). The present case is filed on the basis of fresh cause of action and on different footings as below :—

- A. The workman was appointed through the contractor against the post of Ward Attendant. Later on the contractor left. The workman continues to serve more than 240 days continuously without any break. The workman was paid salary by the Director of the GMCH. Thereafter, the workman started claiming regularisation of his services but his services were orally terminated without any show cause notice, charge sheet or without following mandatory provisions of the ID Act.
- B. The workman filed case before the Assistant Labour Commissioner (ALC) under the Minimum Wages Act, including other aggrieved workers. The claim was allowed. The Award was passed by Sh. Hoshier Singh, the then ALC. The management challenged the Award of ALC and filed CWP No. 8472 of 2002 before the Hon'ble High Court of Punjab & Haryana. The writ petition was dismissed. The management / GMCH filed LPA No.426 of 2015, vide which the Hon'ble High Court directed the management / GMCH to pay an amount of ₹17,982/-. The said amount was paid through the Court of Chief Judicial Magistrate, Chandigarh, which the workman received from the Court in view of the Award passed by ALC. In this way workman became the employee of GMCH i.e. management No.1 & 2. The Award passed by the then Labour Court, U.T. Chandigarh became redundant. The SLP is still pending for adjudication before the Hon'ble High Court.

- C. The workman along with others workmen moved various representations to the management No.1 & 2 for regularisation of their services, but nothing was done by the management.
- D. The junior workmen to the workman were retained by the management and they are still retained by the management and they are still continuing. Even thereafter, many posts were filled by the management without considering the case of the workman. There are many hospitals under the jurisdiction of Chandigarh Administration, particularly in Sector 48 and many vacancies and many posts of Lt. Attendant are still lying vacant. The management No.1 & 2 are likely to start recruitment. The workman deserves to be appointed against the post.
- E. Finding no other alternative, workman sent registered legal notice to the management and Union of India. The Union of India vide its letter dated 21.08.2019 replied the legal notice.
- F. The whole action on the part of the management in termination, the services of the workman is illegal, unlawful, unconstitutional and contrary to the mandatory provisions of the ID Act. Said illegal termination deserves to be set aside and the workman deserves to be reinstated with continuity of service, full back wages and consequential benefits.
- G. The workman is not gainfully employed anywhere in India with Government or semi-Government or private organisation.
- H. The cause of action arose in the year 1996, when the workman was employed Ward Attendant. It further arose when services of the workman terminated illegally without following the mandatory provisions of law. Further cause of action arose when ALC passed the Award in favour of the workman including other workmen and it again arose when department filed CWP, which was dismissed and the department filed LPA and in LPA Hon'ble High Court directed the department to pay ₹17,982/- which was paid through cheque by the management. It further arose when ALC directed the workman to approach the Labour Court. The cause of action is recurring.

The claim statement is well within territorial jurisdiction of the present Court. Prayer is made that termination order may be set aside being unlawful, unconstitutional, illegal, null, void and void *ab-initio*. The workman may be reinstated against the same post with continuity of services, full back wages with continuity of service, seniority and all other consequential benefits.

3. On notice management No.1 & 2 contested the claim statement by filing joint written reply wherein preliminary objections are raised on the ground that the claim statement in fact is a second reference for the same cause of action, praying for setting aside termination of the workman by contractor M/s Enterclimex Security Pvt. Ltd. vide letter dated 31.12.1997 and claiming reinstatement is not legally maintainable being barred by '*res-judicata*' because the workman earlier approached this Court against the aforesaid termination order, which was dismissed by this Court. Further, the second reference on the same cause of action is badly time barred at this stage. The present claim statement is bad for non-joinder of necessary party. The workman was engaged as well as his services were terminated by the contractor M/s Enterclimex Security Co. Pvt. Ltd. The contractor who is necessary party in the present litigation has not been impleaded as a party.

4. Further on merits, it is stated that no fresh cause of action has arisen against the management. The pleas taken by the workman are un-founded. The workman was not engaged by the answering management. As per agreement executed with the contractor, persons engaged by the contractor were / are employees of the contractor for all intents and purposes. The relevant part of contract agreement is re-produced as under :—

"Contract agreement read with clause 10(B.I). The persons deployed by the contractor for work in Government Medical College Hospital, Sector-32, Chandigarh shall be the

employees of the contractor for all intents and purposes and in no case, there shall be a relationship of employer and employees between the said persons and the Institute. Clause 10(B.3) provides that the contractor shall ensure that all the employees should get minimum wages and other benefits as are admissible under various Labour Laws. As such no liability of any contractual worker lies with this institute."

The answering management did not issue any appointment letter to the workman. As such, there is no employer-employee relationship between the answering management and workman.

5. The order passed in CWP No.8472 of 2002 and interim order(s) passed in LPA No.426 of 2015 have no relation or nexus with the issue(s) now sought to be raised by the workman. In the said litigation, the issue was / is regarding rate of wages or wage rate to be paid to the persons engaged by the contractor (s) / outsourcing agency / agencies. The prayer of the workman in the claim petition filed before the Authority under The Minimum Wages Act, U.T, Chandigarh was limited to the payment of difference of wages between the minimum rates of wages notified by the Chandigarh Administration and the wage actually paid to the workman by the contractor challenging the termination order and claiming re-instatement was not the issue in said litigation. The Hon'ble High Court had directed to ensure the Payment of Minimum Wages in view of the statutory provisions contained in The Minimum Wages Act and did not hold that the workmen are employee of the answering management and there was / is employee-employer relationship between the answering management and workman. In para 3 of legal notice dated 13.08.2018 the workman himself has admitted that his claim against termination of his services by the contractor vide letter dated 31.12.1997 was rejected by the Tribunal. The aforesaid order in CWP No.8472 has not attained finality and stand challenged in LPA No.426/2015 which is pending for adjudication and only interim orders are passed in said LPA. Said interim order is of no avail to the workman. The workman was employed as well as his services were terminated by the contractor and not by the answering management. Thus, question of regularisation does not arise, especially when the workman is not working in the GMCH and has not placed on record any document / letter to show that he was ever appointed by the answering management. The workman has not given any details of so called representation, therefore answering management is not in a position to respond the averments made and reserve its right to respond and reply as and when the workman specify or attach the so-called representations. The persons engaged by the contractor or outsourcing agency are employees of the contractor concerned and not of the answering management. The contractor appoints the Attendant(s) on contract basis through outsource at their own. Therefore, the workmen were employees of the contractor concerned for all intents and purposes. The answering management has nothing to do or has no role in the engagement and / or termination by the contractor. Further, the workman earlier had approached this Court against the termination by the contractor. The said claim / petition was dismissed. As such, the pleas sought to be advanced by the workman that junior had been retained carry no credence and is / are of no avail to the workman. The claim putforth by the workman through his counsel by way of legal notice dated 13.08.2018 was duly examined and a detailed reply dated 26.11.2019 was sent to the workman's counsel rejecting his claim. It is denied for want of knowledge that workman is not gainfully employed. The present claim statement is abuse of law. The reliance being placed upon orders passed in CWP and LPA are no avail to the workman when the workman has already availed the remedy against his termination and this Tribunal dismissed his claim statement which has now attained finality. That being so, the present claim statement is not maintainable and barred by principle of *res-judicata* and barred by limitation. The territorial jurisdiction of the Court is not disputed. Rest of the averments of claim statement are denied as wrong and prayer is made that claim statement may be dismissed with costs being not legally maintainable and devoid of merits.

6. The workman filed replication wherein the contents of written reply except admitted facts, are denied as wrong and averments of claim statement are reiterated.

7. From the pleadings of the parties, following issues were framed vide order dated 04.03.2022 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the claim of the workman is barred by principle of *res-judicata* ? OPM
3. Whether the claim of the workman is time barred ? OPM
4. Whether the claim of the workman is bad for non-joinder of necessary party ? OPM
5. Relief.

8. In evidence workman Malkeet Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 20.04.2023 Learned Representative for the workman tendered documents Exhibit 'W1', Exhibit 'W2' and Mark 'A' to Mark 'E'.

Exhibit 'W1' is the certified copy of Execution Application bearing filing No. 2578/2016 before the court of Ld. CJM, Chandigarh, titled as Shri Ajay Kumar & Ors. Vs Govt. Medical College & Hospital, Sector 32, Chandigarh & Ors. seeking to execute the order dated 26.02.1999 in Application No.10/1998 passed by the court of Shri S. S. Chauhan, Authority under the Minimum Wages Act and further in view of the order dated 19.03.2015 passed by the Hon'ble High Court in CMs-848 and 849-LPA-2015 in/and LPA No.426 of 2015.

Exhibit 'W2' is certified copy of zimni order dated 11.07.2016, 23.08.2016, 01.10.2016, 09.11.2016, 28.11.2016, 07.12.2016, 15.12.2016, 05.12.2016, 21.12.2016, 03.01.2017, 16.01.2017, 21.01.2017, 04.02.2017, 01.03.2017, 05.04.2017, 29.04.2017, 30.05.2017, 31.07.2017, 29.09.2017, 02.12.2017, 06.12.2017 relating to the court of Shri Akashdeep Mahajan, Addl. Civil Judge (Sr. Div.), Chandigarh, pertaining to execution application filing No. 2578 of 2016.

Mark 'A' is photocopy of application dated nil moved by workmen Sohan Singh & Ors. to G.M.C.H. through Shri S.K. Guleria, Advocate regarding joining report of 18 workmen.

Mark 'B' is photocopy of order dated 05.12.1995 of Medical Superintendent, G.M.C.H, Chandigarh.

Mark 'C' is photocopy of joining report dated 03.05.1995 of Bikram Singh S/o Surjan Singh.

Mark 'D' is photocopy of joining report dated 08.05.1995 of Sohan Singh.

Mark 'E' is photocopy of joining report dated 03.05.1995 of Lalit Kumar S/o Ramanand.

9. On 02.05.2023 Learned Representative for the workman tendered document Exhibit 'W3' i.e. copy of order dated 19.03.2015 passed by the Hon'ble High Court in CMs-848 and 849-LPA-2015 in/and LPA No.426 of 2015 titled as Govt. Medical College & Hospital, Chandigarh Versus Authority appointed under Minimum Wages Act and closed the evidence of the workman in affirmative.

10. On the other hand, management examined MW1 Sanjay Kumar - Senior Assistant, Establishment Branch IV, GMCH, Sector 32, Chandigarh who tendered his affidavit Exhibit 'MW1/A'.

11. The management also examined MW2 Surinder - Junior Assistant, Establishment Branch - IV, GMCH, Sector 32, Chandigarh, who tendered his affidavit Exhibit 'MW2/A' along with document Exhibit 'MW2/1' i.e. copy of letter dated 31.12.1997 issued by Chief Controller for Enterclimax Security to The Director Principal, GMCH, Sector 32, Chandigarh relating to the subject of removal of the contractual Ward Attendants.

12. On 03.07.2023 Learned Law Officer for the management closed the evidence.

13. I have heard the arguments of Learned Representative for the workman and Learned Law Officer for the management and perused the judicial file. My issue-wise finding are as below :—

Issue No. 1 & 2 :

14. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 is on the management.

15. To prove its case, workman Malkeet Singh examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. To support his oral version Learned Representative for the workman referred documents Exhibit 'W1' to Exhibit 'W3' and Mark 'A' to Mark 'E'.

16. To rebut the case of the workman, management examined MW1 Sanjay Kumar, who vide his affidavit Exhibit 'MW1/A' deposed the entire contents of written reply which are not reproduced here for the sake of brevity.

17. For corroboration Learned Law Officer for the management referred to testimony of MW2 Surinder, who vide his affidavit Exhibit 'MW2/A', apart from the contents of written reply, deposed that these cases are very old i.e. way back of year 1995-96 and the dealing official / Incharge of Establishment - IV Branch had supplied the record available for drafting reply in the instant matter to legal cell. No such joining report, salary disbursement and muster roll since 1995 of workman is traceable. As per record, the workman was deployed on contract basis through outsource by the contractor M/s National Security & Allied Services, Jalandhar. Therefore, all the record of outsource employee, is concerned with the contractor and termination by contractor M/s Enterclimax Security Co. Pvt. Ltd. To support oral version of MW2, Learned Law Officer referred Exhibit 'MW2/1'.

18. From the oral as well as documentary evidence led by the parties, it comes out that the workman was appointed against the post of Ward Attendant through contractor National Security & Allied Services, Head Office Punjab (as mentioned in the legal notice dated 13.08.2018 relied upon by the workman). The workman has alleged that his services were terminated without issuing any show cause notice, charge sheet or without following the mandatory provisions of the ID Act. The workman in his claim statement did not mention the date of appointment and date of termination of his services. However, it is own case of the workman that previously he filed a claim statement before the Labour Court / Industrial Tribunal, U.T. Chandigarh challenging his termination order and the said claim statement / industrial dispute reference was dismissed by this Court (in para 3 of legal notice dated 13.08.2018, relied upon by the workman, the date of award passed by the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh is mentioned as 05.03.2007). In the entire pleadings the workman did not mention the particular and details of the previous claim statement wherein he had challenged his termination order. The workman also did not disclose the particular of said claim statement and also did not mention the date

of passing of Award vide which the aforesaid claim statement / ID Act has declined by this Court. However, from the copy of legal notice dated 13.08.2018 (relied upon by the workman) in para 3 it is mentioned that his clients filed a case before Labour Commissioner, U.T. Chandigarh for terminating their services. The reference was sent to the appropriate Government of U.T. Chandigarh and reference was also sent to the Labour Court for adjudication but their claim was dismissed by the Labour Court-cum-Industrial Tribunal, Chandigarh vide order dated 05.03.2007. The workman did not place on record the copy of pleadings in the previous industrial dispute reference decided vide Award dated 05.03.2007 by this Court and also did not place on record copy of the said Award dated 05.03.2007. However, the fact remains that the workman in previous industrial dispute reference challenged his termination order and the said previous industrial dispute reference was dismissed by this Labour Court-cum-Industrial Tribunal vide order dated 05.03.2007. Till date the workman has not challenged the order / Award dated 05.03.2007, thus the same has become final.

19. It is own plea of the workman that he was appointed to the post of Ward Attendant by the contractor and later on the contractor left. The workman in the claim statement did not mention up to which year he remained under the contractor or in which month or year the contractor left. However, when put to cross-examination the workman states that he worked as outsource employee in GMCH up to March 1998, he refused to work under new outsource agency, therefore, he was terminated from job. He was not issued any termination letter or relieving letter by the GMCH, Sector 32, Chandigarh. After termination he filed a case seeking payment of minimum wages before Assistant Labour Commissioner, U.T. Chandigarh. The workman did not plead that till what / which date he was paid salary by the contractor.

20. The workman has alleged that although his previous claim statement whereby he challenged the termination order and sought reinstatement was dismissed by this Court but now present cause of action arises in his favour in view of the interim order passed by the Hon'ble High Court in LPA No. 426/2015. Learned Representative for the workman argued that the workman filed claim application before the Assistant Labour Commissioner, U.T. Chandigarh under the Minimum Wages Act, which was allowed by the Assistant Labour Commissioner. The management challenged the order of Assistant Labour Commissioner by filing CWP No.8472 of 2002 which was dismissed. Thereafter management of GMCH filed LPA No.426/2015 before the Hon'ble High Court wherein interim order has passed and direction was issued to the management / GMCH to pay arrears of ₹17,982/- to the workman. The management paid the said arrears to the workman by cheque and said amount was received by the workman in the Court of CJM, Chandigarh. LPA is pending. Learned Representative for the workman laid much stress upon the fact that since the payment is made by management of GMCH to the workman, therefore the previous order / Award dated 05.03.2007, whereby the claim of the workman challenging termination order and seeking reinstatement was dismissed has become redundant. The workman has become employee of GMCH / management No.1 & 2 therefore entitled to regularisation of his services.

21. On the other hand, Learned Law Officer for the management argued that claim application before the ALC is limited to the payment of difference of wages between the minimum rate of wages notified by the Chandigarh Administration and the wage actually paid to the workman by the contractor. The termination order was neither under challenge nor an issue before the ALC. The payment of difference of wages made by the management in compliance with the direction of Hon'ble High Court in LPA No.426/2015 in no manner has any connection with the termination or regularisation of services of the workman. To my opinion, it is undeniable fact that the workman filed claim application before the ALC, U.T. Chandigarh seeking recovery of difference of wages of Minimum Wages Act and in the said case neither the termination order was under challenge nor in issue. The matter confined in claim application before the ALC was payment of difference of wages only. In this regard, AW1 in his cross-examination stated that after termination he filed a case seeking payment of wages before the ALC, U.T. Chandigarh. The workman has placed on record copy of order dated March 19, 2015 passed by the Hon'ble High Court in CMs 848 and 849 - LPA-2015 in / and LPA No.426/2015

titled as Government Medical College & Hospital, Chandigarh Versus Authority appointed under the Minimum Wages Act vide Exhibit 'W3'. The relevant portion of Exhibit 'W3' is reproduced as below :—

"The Chandigarh Administration is impleaded as a party. It shall bring all the necessary notifications relating to the applicability of the Minimum Wages Act to the Government Medical College & Hospital, Sector-32, Chandigarh-appellant.

In the meantime, the appellant shall make the payment due to those who had filed execution on furnishing necessary surety for restitution of the amount or excess amount, if any, to the satisfaction of the executing authority.

List for hearing on 14.07.2015."

Admittedly the LPA No.426/2015 is pending before the Hon'ble High Court. Exhibit 'W2' is the copy of all the zimni orders passed in the execution proceedings titled as **Ajay Kumar & Others Versus GMCH-32, Chandigarh** before the Court of ACJ(SD). The relevant portion of order dated 07.12.2016 of ACJ(SD), Chandigarh is reproduced as below :—

"Sh. Yadwinder Singh, Law Officer, GMCH-32 Chandigarh for the respondents no. 1 & 2 suffered a statement that he has brought 29 demand drafts total amounting to Rs.5,21,438/- issued in favour of 29 persons i.e., decree holders mentioned in the execution application as per the detailed description given in letter dated 02.11.2016 which is already Ex.PX. Kindly placed on record all the 29 demand drafts as mentioned in Ex.PX and it is requested that the demand drafts shall be handed over to the decree holders on their furnishing surety as per the orders of Hon'ble High Court, Chandigarh. In view of above, the above said demand drafts are taken and Ahlmad of this court is directed to tagged the above said drafts in a proper way.

Learned counsel for the applicant undertake to furnish surety bonds within a week in view of order passed by the Hon'ble High Court, Chandigarh. Statement recorded separately. Now, to come up on 15.12.2016 for furnishing the security by the applicants."

22. It is undeniable fact that all the applicants / DHs of execution proceedings furnished requisite surety and the amount of ₹17,982/- each were released to them in the form of demand draft. Moreover, it is own case of the workman that in compliance with the interim order of Hon'ble High Court passed in LPA No. 426/2015 the GMCH, Sector 32 made payment which was received by the workman through the executing Court of CJM / ACJ(SD), Chandigarh.

23. Now the question before this Court is if the interim order dated 19.03.2015 / Exhibit 'W3' in any manner relate to the termination or regularisation of service of the workman. Answer is 'No' because payment of difference of wages to the GMCH, Sector 32 to the workman in compliance with the order of Hon'ble High Court in the matter relating to payment of wages under Minimum Wages Act, cannot be interpreted to mean that by making payment by GMCH / or receiving payment by the workman of difference of wages, the termination order will become invalid of its own or the previous Award dated 05.03.2007 passed by Labour Court, Chandigarh dismissing the IDR / claim statement of the workman seeking to set aside termination order, will become redundant. The termination of service, reinstatement, regularisation does not fall within the purview of Minimum Wages Act, hence order Exhibit 'W3' in no manner has any impact on the termination of the workman. The GMCH, Sector 32, Chandigarh / management No.1 & 2 neither issued any appointment letter nor termination order to the workman. Learned Representative for the workman raised objection to the termination order dated 31.12.1997 / Exhibit 'MW2/1' brought into evidence by MW2. Exhibit 'MW2/1' is the letter of termination the services of the workman by the employer / contractor Enterclimex w.e.f. 31.12.1997. The workman has not impleaded the employer Enterclimex as party to the claim statement, thus claim statement is bad for non-joinder of necessary party. Above all during course of arguments Learned Representative of the workman failed to controvert the fact that in previous IDR the termination order vide letter dated 31.12.1997 /

Exhibit 'M2/1' was under challenge. If the termination Exhibit 'MW2/1' is ignored, then also workman has failed to prove that his services were terminated by management No.1 & 2 / GMCH Sector 32, Chandigarh. AW1 in his cross-examination stated that he worked as outsource employee in GMCH-32, Chandigarh up to March, 1998. He refused to work under the new agency, therefore he was terminated from the job. He was not issued any termination letter by GMCH, Sector 32, Chandigarh. The aforesaid version of AW1 would prove that from the date of appointment till termination of service he was working with GMCH, Sector 32, Chandigarh being outsource employee under the contractor. In this manner the workman was employee of the contractor not GMCH, Sector 32, Chandigarh. So the question of termination of services of the contractual employee by the GMCH, Sector 32, Chandigarh does not arise. The contractual employee to seek regularisation of services must come through the selection process. Here it is not the case of the workman that they have qualified any selection process. Hon'ble High Court of Delhi in case of ***Desh Deepak Srivastava Versus Delhi High Court & Another, CWP (C) No.9570/2015*** held that a contractual employee cannot claim any right to regularisation or absorption of services, if continued on an ad-hoc for decades.

24. Moreover, the issue of termination of the services of the workman have already been adjudicated upon by this Labour Court & Industrial Tribunal, U.T. Chandigarh vide Award dated 05.03.2007 vide which the claim of the workman seeking to set aside termination order, was discussed. The workman did not challenge the Award dated 05.03.2007 before the competent Court of law. Therefore, the Award dated 05.03.2007 has attained finality. The workman is not entitled to re-agitate the same issue which is already decided by the competent court and which has become final. Consequently, the present claim is barred by principle of *res-judicata* under Section 11 of CPC.

25. Accordingly, issue No.1 is decided against the workman and in favour of the management. Issue No.2 is decided in favour of the management and against the workman.

Issue No. 3 :

26. Onus to prove this issue is on the management.

27. The workman has alleged that his services were terminated in the year 1998. He raised 2nd time industrial dispute by raising demand notice in the year 2019 and presented the present claim on 25.08.2020 i.e. after about 22 years of raising demand notice. Thus, the present claim statement is barred by limitation.

28. Accordingly, this issue is decided in favour of the management and against the workman.

Issue No. 4 :

29. Onus to prove this issue is on the management.

30. The contractor / (last contractor i.e. Enterclimex) was the employer of the workman. The workman has challenged his termination of services without impleading his employer, who was a necessary party. Thus, the present claim statement is bad for non-joinder of necessary party.

31. Accordingly, this issue is decided in favour of the management and against the workman.

Relief :

32. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 03-07-2023.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Manju, D/o Late Shri Harbans Lal Kochhar, R/o H. No. 4100-A, Sector 37-C, Chandigarh, have changed my name from Manju to Manju Kochhar.

[1185-1]

I, Gurdayal Singh, S/o Pritam Singh, R/o 279, Shastri Nagar, Manimajra, Chandigarh, have changed my name to Gurdial Singh.

[1186-1]

I, A. K. Prasad, S/o Bishwanath Prasad, # 241, Sector 47-A, Chandigarh, have changed my name to Ajai Kumar Prasad.

[1187-1]

I, Ashok Kumar, S/o Ved Parkash, R/o # 163, Sector 25-D, Janta Colony, Chandigarh, declare that I have changed the name of my minor son from Deepak Verma to Deepak.

[1188-1]

I, Hemlata Devi *alias* Hem Lata Devi, W/o Chander Singh, # 28, Village Behlana, Chandigarh, have changed my name to Hemlata.

[1189-1]

I, Jaswinder Kaur, W/o Kanwerjit Singh Saini, R/o H. No. 1800, Village Burail, Chandigarh, have changed my name from Jaswinder Kaur Saini to Jaswinder Kaur.

[1190-1]

I, Roshni Devi, W/o Rakesh Kumar, # 153, Small Flats Maloya, Chandigarh, have changed my name Roshni.

[1191-1]

I, Rajbir Sharma, S/o Mangal Ram, # 1595, Phase-2, Ramdarbar, Chandigarh, have changed my name to Rajbir Singh.

[1192-1]

I, Iti Dey, W/o Tapan Day, R/o House No. 238, Hallomajra, Chandigarh, have changed my name from Iti Dey to Eti Day.

[1193-1]

I, Tapan Kumar Dey, S/o Sh Manmohan Dey, R/o House No. 238 Hallomajra, Chandigarh, have changed my name from Tapan Kumar Dey to Tapan Day.

[1194-1]

I, Amita Varma, W/o Tony John, R/o # 149, Sector 46-A, Chandigarh, have changed my minor son name from Ashwin Antony to Ashwin Anthony John.

[1195-1]

I, Suman, W/o Paramjeet Singh, R/o H. No. 252, Village Burail, Chandigarh, have changed my name from Suman to Suman Lata.

[1196-1]

I, Mamta Devi, W/o Balinder Singh, R/o 38, Sector 46-A, Chandigarh, have changed my name from Mamta to Mamta Devi. Concerns note.

[1197-1]

I, Poonam Rani, W/o Bhupesh Arora, H. No. 3480, Sector 23-D, Chandigarh, have changed my name to Poonam Arora.

[1198-1]

I, Kuldeep Kumar, S/o Baldev Raj, # 2262/2, Sector 37-C, Chandigarh, have changed my name to Kuldeep Kaushal.

[1199-1]

I, Pallavi Malhotra, W/o Keshav Khanna, R/o H. No. 37, Sector 21-A, Chandigarh, have changed my name from Pallavi Malhotra to Pallavi Khanna after my marriage.

[1200-1]

I, Neeru, W/o Sh. Rahul Garg, R/o H. No. 1529, Sector 22-B, Chandigarh, have changed my name from Neeru to Neeru Garg. Neeru and Neeru Garg are one and same person. All concerned please note and corrected in all the records accordingly.

[1201-1]

"No legal responsibility is accepted for the contents of publication of advertisements/public notices in this part of the Chandigarh Administration Gazette. Persons notifying the advertisements/public notices will remain solely responsible for the legal consequences and also for any other misrepresentation etc."